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8                      UNITED STATES DISTRICT COURT

9                     NORTHERN DISTRICT OF CALIFORNIA

10                          SAN JOSE DIVISION

11 NOEMIA CARVALHO, on behalf of herself    ) Case No. 5:08-cv-01317-JF-HRL
   and other similarly situated people,     )
12                                          ) [Assigned to the Honorable Jeremy Fogel]
                                            )
              Plaintiff,                     )
13                                          ) **OPPOSITION OF DEFENDANT**
       v.                                    ) **TRANSUNION LLC TO PLAINTIFF'S**
14                                          ) **MOTION TO REMAND CASE TO STATE**
                                            ) **COURT**
   CREDIT CONSULTING SERVICES, INC.,        )
15 dba CCS, EQUIFAX CREDIT                   )
   INFORMATION SERVICES, LLC,               ) Date:      June 20, 2008
16 EXPERIAN INFORMATION SOLUTIONS,          ) Time:      9:00 a.m.
   INC., TRANS UNION LLC and DOES 1-50,     ) Location:  Courtroom 3
17 inclusive,                               )
                                            )
18            Defendants.                    )
                                            )
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LA 51048015

1    Although the Class Action Fairness Act does not require all defendants to consent to

2  removal of an action to federal court, see 28 U.S.C. § 1453(b), defendant TransUnion LLC

3  ("TransUnion") hereby advises the Court that it does not object to removal of the instant action.

4    In addition, TransUnion wishes to advise the Court of the numerous instances since removal

5  by defendant Equifax Information Services LLC ("Equifax"), where plaintiff Noemia Carvalho

6  ("Plaintiff") has expressly taken the position that federal law now applies.  This suggests that

7  Plaintiff now consents to removal, or at least that she should be judicially estopped from

8  challenging removal.  The following are two examples of Plaintiff's conduct consistent with

9  removal of the action.

10    First, Plaintiff took the position (although incorrectly) that the Superior Court's orders

11  entered prior to removal no longer were valid.[1]  Specifically, Plaintiff demanded that TransUnion

12  cease its efforts to enforce the Monterey County Superior Court's February 11, 2008 Order

13  allowing discovery by denying in part Plaintiff's Motion to Quash a third-party subpoena that

14  TransUnion had issued in the state court action, prior to removal.  Plaintiff vigorously argued that,

15  "because the matter has been removed, the Monterey Superior Court orders no longer have any

16  authority[.]"  (See Declaration of Brian C. Frontino (Frontino Decl.), ¶ 2, Ex. A.)

17    Second, in arguing that the Monterey Court's Order on Plaintiff's Motion to Quash no

18  longer was valid, Plaintiff further insisted that TransUnion issue a new third-party subpoena

19  pursuant to Federal Rule of Civil Procedure 45.  Plaintiff asserted that, because the case had been

20  removed, Federal Rule of Civil Procedure 34(b) mandated that third-party discovery was available

21  only through the use of a subpoena issued pursuant to Federal Rule of Civil Procedure 45.  (Id. ¶ 3,

22  Ex. B.)

23    As demonstrated by the foregoing, Plaintiff has endorsed this Court's authority and ratified

24  removal.  Finally, the Motion is procedurally invalid because Plaintiff's counsel failed to confer

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27  [1]  Naturally, Plaintiff's position is meritless, given 28 U.S.C. §1450 ("All injunctions, orders, and
other proceedings had in such action prior to removal shall remain in full force and effect until
28  dissolved or modified by the district court").

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1   with counsel for TransUnion prior to reserving a hearing date.  (Id. ¶ 4.)  For these reasons, and

2   those set forth in the Equifax's Motion and Reply in support thereof, the Motion should be denied.

3   Dated:  May 30, 2008                          STROOCK & STROOCK & LAVAN LLP
                                                   JULIA B. STRICKLAND
4                                                  STEPHEN J. NEWMAN
                                                   BRIAN C. FRONTINO
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6
                                                   By:        /s/ Brian C. Frontino
7                                                              Brian C. Frontino

8                                                  Attorneys for Defendant
9                                                     TRANSUNION LLC

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OPPOSITION OF DEFENDANT TRANSUNION LLC TO PLAINTIFF'S MOTION
TO REMAND CASE TO STATE COURT - Case No. 5:08-cv-01317-JF-HRL

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